

HIGH COURT OF GUJARAT AT AHMEDABAD.

CRIMINAL APPEAL NO. 521 OF 1985.

Date of Decision: 1.12.1995.

FOR APPROVAL AND SIGNATURE

THE HONOURABLE Mr.JUSTICE M. H. KADRI.

1. Whether Reporters of Local Papers
may be allowed to see the Judgment? YES/NO.

2. To be referred to the Reporter or
not ? YES/NO.

3. Whether Their Lordships wish to see
the fair copy of Judgment ? YES/NO.

4. Whether this case involves a subst-
-antial question of law as to the
interpretation of the Constitution
of India, 1950 or any order made
thereunder ? YES/NO.

5. Whether it is to be circulated to
the Civil Judges ? YES/NO.

Mr.K.P.Raval, APP, for the Appellant-State.

Respondent-Original Accused No.4 served.

CORAM: M. H. KADRI, J.

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ORAL JUDGMENT.

State of Gujarat, being aggrieved by the judgment and order dated 21.2.1985, passed by the learned Judicial Magistrate First Class, Modasa, in Criminal Case No. 653/82, in so far as it concerns the acquittal of original accused no.4, of the charge levelled against him, has filed this appeal. The prosecution case, as it emerges from the charge Exh.2, is that, on 2.2.1982, all the accused armed with deadly weapons trespassed the house of PW 17, and inflicted injuries by sticks and axe. On the basis of this allegation, charge-sheet was filed against four accused in the court of the learned JMFC, Modasa.

2. After recording evidence of witnesses, by the impugned judgment and order, the learned Magistrate was pleased to convict original accused No. 1, 2 and 3 for the offence punishable under S.324 of the I.P.Code and sentenced each one of them to imprisonment till rising of the court, and to pay a fine of Rs.500/- and in default to undergo S.I. for one month. The learned Magistrate in paragraph 19 of the judgment held that the presence of accused no.4 at the place and time of the incident was doubtful, and therefore, by giving benefit of doubt, the learned Magistrate acquitted him of the charge levelled against him. The State has preferred the present appeal against that part of the order acquitting original accused no.4.

3. Heard Mr.K.P.Raval, the learned APP for the State. He has taken me through the oral as well as documentary evidence produced on record at the trial of the case before the learned Magistrate. After going through the record and hearing the learned APP, I do not find any infirmity or illegality in the impugned judgment and order. The learned Magistrate has rightly acquitted accused no.4, whose presence at the place and time of the incident was doubtful.

4. It is now well settled that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. On the basis of the evidence produced on record, it cannot be said that the learned Magistrate has committed any error in acquitting accused no.4 of the charge levelled against him. Hence, in my opinion, there are no grounds to interfere with the conclusion arrived at by the learned Magistrate.

5. In the result, the appeal fails, and is dismissed.
